

BEFORE THE BOARD OF ENVIRONMENTAL REVIEW
OF THE STATE OF MONTANA

In the matter of the amendment of ARM)
17.30.1101, 17.30.1102, 17.30.1105,)
17.30.1106, 17.30.1107, 17.30.1111,)
17.30.1341, and 17.30.1342 pertaining)
to Montana pollutant discharge)
elimination system (MPDES) permits,)
purpose and scope, definitions, permit)
requirements, exclusions, designation)
procedures: small municipal separate)
storm sewer systems (MS4s),)
application procedures, permit)
requirements, general permits and)
conditions applicable to all permits and)
repeal of ARM 17.30.1110, 17.30.1115,)
and 17.30.1117 application procedures:)
general, notice of intent procedures, and)
transfer of permit coverage pertaining to)
storm water discharges)

NOTICE OF AMENDMENT

(WATER QUALITY)

TO: All Concerned Persons

1. On August 7, 2014, the Board of Environmental Review published MAR Notice No. 17-365 regarding a notice of public hearing on the proposed amendment and repeal of the above-stated rules at page 1667, 2014 Montana Administrative Register, Issue Number 15.

2. The board has amended ARM 17.30.1106 exactly as proposed. The board has not amended or repealed any of the other rules.

3. The following comments on the proposed amendments to ARM 17.30.1106 were received and appear with the board's responses:

COMMENT NO. 1: The storm water runoff exemption in ARM 17.30.1106 for mining and oil and gas operations should be extended to municipal separate storm sewer systems (MS4s) so that discharges to conveyance systems (pipes, conduits, ditches, and channels) do not require permit coverage.

RESPONSE: The proposed storm water exemption for mining and oil and gas operations in ARM 17.30.1106 is the same as an exemption for the operations under the national pollutant discharge elimination system in the federal Clean Water Act at 33 USC 1342(l)(2) (CWA §402(l)(2)). There is no equivalent exemption for MS4 discharges in the federal statutes or regulations. Exemption of MS4s from the MPDES permit requirement would jeopardize Montana's primacy under the Clean Water Act and expose cities to potential federal regulation.

COMMENT NO. 2: The reason given for excluding storm water runoff from mining and oil and gas activities, in ARM 17.30.1106(c), is for consistency with federal regulations. Federal and Montana statutes specifically allow adoption of regulations that are more stringent than the Code of Federal Regulations. It seems appropriate to subject mining and oil and gas activities, and other extractive industries, to more stringent regulation.

RESPONSE: Mining activities are already exempted in this rule, and proposed amendment would continue that exemption. The amendments would add oil and gas operations, but only if the storm water has not come into contact with overburden, raw material, products or byproducts, or wastes. If pollutants are not coming into contact with the storm water, there is no reason for the operation to obtain a MPDES permit for that conveyance.

4. The board received a number of comments on other rules in this rulemaking. However, the board is not adopting amendments to any rule except ARM 17.30.1106 and the Department of Environmental Quality will be engaging in a stakeholder process regarding the unamended rules. The comments on those rules are, therefore, not addressed in this notice.

Reviewed by: BOARD OF ENVIRONMENTAL REVIEW

/s/ John F. North
JOHN F. NORTH
Rule Reviewer

By: /s/ Robin Shropshire
ROBIN SHROPSHIRE
Chairman

Certified to the Secretary of State, December 15, 2014.